



OFFICE OF
INSURANCE COMMISSIONER

4056 12/13/06 \$50,000.00 ✓

In the Matter of

GREAT-WEST HEALTHCARE OF
WASHINGTON INC.

A Registered Health Care Service
Contractor

No. D06-303

**CONSENT ORDER
IMPOSING A FINE**

To: Great-West Healthcare of Washington Inc.
3005 112th Avenue NE, Suite 220
Bellevue, WA 98004

Comes Now the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080 and RCW 48.44.166, and having reviewed the official records and files of the Office of the Insurance Commissioner, enters the following order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

General Findings:

1. Great-West Healthcare of Washington Inc., is a health care service contractor ("HCSC") authorized to do business in the State of Washington and is hereafter referred to as "Great-West." Great-West's HCSC registration is currently active, but Great-West formally requested withdrawal from the large and small group market in the State of Washington on June 25, 2004. Great-West met the requirements for withdrawal as stated in RCW 48.43.035 and approval to withdraw was granted on July 26, 2004. Great-West's withdrawal from the HCSC large and small group HCSC market was complete on January 1, 2006, and in accordance with RCW 48.43.035(d), Great-West will not be permitted to issue coverage in these markets for a period of five years from the date it discontinued such coverage. Great-West has retained its HCSC registration since its withdrawal from the Washington HCSC market.
2. The Office of the Insurance Commissioner (OIC) conducted a market conduct examination of Great-West covering the time period between January 1, 2002 and

December 31, 2003. The OIC notified Great-West of the market conduct examination on February 26, 2004.

3. The market conduct examination of Great-West was adopted by the Insurance Commissioner by Order Adopting Report of Market Conduct Examination No. G05-46, entered June 30, 2005, which order is final ("Final Order").
4. Great-West submitted a compliance plan to the Office of Insurance Commissioner as required by the Final Order.
5. The OIC conducted a financial examination of Great-West Healthcare of Washington, Inc. formerly known as One Health Plan of Washington, Inc. showing the condition of the company as of December 31, 2002.
6. The financial examination of Great-West was adopted by the Insurance Commissioner by Findings Conclusions, and Order Adopting Report of Financial Examination No. G06-4, entered February 24, 2006, which order is final.
7. RCW 48.44.166 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.
8. In determining the appropriate assessment for violations, the OIC may consider relevant factors, including: the impact of violations in the market place, the carrier's record of violations and the carrier's willingness to work with the OIC to take corrective action to ensure compliance with applicable laws and regulations.
9. Great-West took remedial action prior to resolution of this matter to remedy the problems identified through the OIC's examination process, including developing and filing with the OIC a compliance plan to address matters identified through the examination process, and implementing all steps identified in the compliance plan filed prior to the entry of the final examination report. These measures were completed following the approved withdrawal of Great-West from the Washington HCSC market. The OIC has taken Great-West's remedial actions into account in drafting the Examination Report and in assessing appropriate penalties in this Consent Order. The OIC also has taken into account Great-West's agreement with the OIC to voluntarily relinquish its certificate of registration as provided herein in assessing appropriate penalties in this Consent Order.

Market Conduct Examination Findings:

Company Operations and Management:

10. Great-West marketed itself through other entities, including Great-West Life & Annuity Insurance Company (GWLA), New England Life Insurance (NELI), and Alta Health & Life Insurance Company (Alta). GWLA, NELI, and Alta are not registered with the OIC as health care service contractors (these companies are authorized as disability carriers). In addition, within the Provider Activity section of the market conduct examination, the examiners found that Great-West continued using the name "One Health Plan of Washington, Inc." after the effective date of the name change to Great-West. Provider contracts were not amended to reflect the Company's name change. By using entity names that were not registered as health care service contractors, as defined in RCW 48.44.010, Great-West violated RCW 48.44.015(1).

On June 6, 2005, Great West issued a memorandum to its senior vice presidents and compliance officers providing instruction on using appropriate letterhead and clearly identifying the full name of the company in any items that may be circulated in the marketplace, and as part of its compliance plan undertook additional training efforts to address compliance issues related to proper name use and identification in the Washington market.

11. Even though it was licensed as a health care service contractor, the Company sometimes referred to itself as a health maintenance organization (HMO). Great-West had references to being an HMO in the examination materials related to provider activity, advertising, complaints, and underwriting. By holding itself out to be a health maintenance organization as defined in RCW 48.46.020 without first being authorized by the commissioner, Great-West violated 48.46.027(1).
12. There were instances in the examination where the receipt of information was delayed due to interpretation and questions surrounding the OIC's jurisdiction of self-funded ERISA plans. The examiners found that it often took two or three attempts before Great-West would provide valid, suitable responses to questions and valid, usable information to the OIC Market Conduct Examiners. After written requests and telephone clarification, the databases Great-West provided to the OIC contained information outside the scope of the examination and erroneous information. Great-West also submitted procedure manuals that were not in use during the examination period. Great-West's responses to the OIC's information requests were often restatements of the examiners' questions instead of answers. One complaint file requested for review did not contain sufficient information and the examiners were unable to test standards; Great-West was unable to provide one complaint file that was requested and these files could not be located; and Great-West was unable to provide four large group quote files that were requested and the files could not be located. By failing to submit its books and records relating to the examination process to in every way facilitate the examination process, Great-West violated 48.44.145(2).

Complaints:

13. While Great-West had filed its procedures at the time it applied for its Certificate of Registration, Great-West failed to file subsequent revisions with the OIC. By failing to file with the commissioner copies of its procedures for review and adjudication of provider complaints, Great-West violated RCW 48.43.055.
14. Even though it was admitted as an HCSC in Washington State in 1997, Great-West did not have a fully operational and comprehensive grievance plan until July 1, 2002. Even after the plan was implemented, Great-West's regional offices did not consistently follow its procedures for handling complaints, appeals, and grievances. Furthermore, Great-West's grievance plan did not include all procedures necessary to ensure grievances were handled according to Washington law. By failing to have an operational and comprehensive grievance process, Great-West violated RCW 48.43.530. On June 1, 2005, Great-West amended its appeal and grievance procedures to address this violation.
15. Great-West's procedures improperly limited independent review to only those disputes concerning medical necessity. By failing to permit enrollees to seek review of decisions by an independent review organization for medical necessity, clinical or service disputes, Great-West violated RCW 48.43.535(2). On June 1, 2005, Great-West amended its appeal and grievance procedures to address this violation.

Claims:

16. Great-West's policies regarding utilization review criteria did not require a determination to be made until 72 hours after a request was received, and did not include the two-day notification requirement. Furthermore, the initial notification did not include the date of the next anticipated review point. By failing to implement procedures requiring: (i) review determinations within two (2) business days of receipt of the necessary information, and (ii) to communicate the decision to providers and to the covered person within two (2) days of the decision, Great-West violated WAC 284-43-410(5) and RCW 48.43.520. On June 7, 2005, Great-West amended its utilization procedures to comply with these statutory requirements.
17. One (1) claim received on May 28, 2003 was closed on June 6, 2003 when coded to indicate that coordination of benefits might be applicable. Great-West opened a new claim when it was notified that no coordination of benefits applied, and processed the claim on July 1, 2003. By unreasonably delaying payment of a claim by reason of the application of a coordination of benefits provision, Great-West violated WAC 284-51-100.
18. Great-West initially denied 2 claims for women's health care due to lack of referral. By initially denying these claims, Great-West violated RCW 48.42.100 and WAC 284-43-250(3).

19. Great West initially denied 3 claims for emergency or urgent care. By initially denying these claims for covered emergency services necessary to screen and stabilize a covered person, Great-West violated RCW 48.43.093(1)(a).

Agent Activity:

20. One Great-West agent received a quote for a January 1, 2004 effective date on October 20, 2003. This agent was not licensed until February 20, 2004. By not requiring all agents and brokers to be licensed and appointed before soliciting business or representing the company, Great-West violated RCW 48.17.060 and RCW 48.44.011(2).

Rate and Form Filing:

21. Great-West did not re-file its small group or conversion contract forms, or its large group, small group or conversion rates, within 18 months of previous filings as required by Washington law. By failing to re-file these contracts and forms within the required time period, Great-West violated RCW 48.44.040 and WAC 284-43-920(1)(b).

Provider Activity:

22. More than half of the Great-West provider contracts contained provisions that conflicted with Washington state law. By failing to ensure its provider contracts reflected the standards required under Washington law, Great-West violated WAC 284-43-320 through 284-43-340. In April 2005, Great-West re-filed its provider contracting documents.
23. 11 of 23 provider contracts examined failed to include a provision advising that collecting or attempting to collect an amount from a member knowing it to be in violation of the provider or facility contract is a Class C Felony. By failing to incorporate in its provider contracts requirements that providers not collect payments from patients in violation of Washington law, Great-West violated WAC 284-43-320.
24. 16 of 23 provider contract forms examined contained either an incorrect payment description or did not contain the required payment description. By failing to include a set schedule for prompt payment provider claims and penalties for late payment in its provider contracts, Great-West violated WAC 284-43-321(1).
25. 16 of 23 provider contract forms examined were not filed with the OIC prior to use. By failing to file sample contract forms before use, Great-West violated WAC 284-43-330(1).
26. 18 of 23 provider contract forms examined were not brought into compliance by regulatory deadlines. By failing to update provider and facility contracts to conform with the new rules by specific deadlines, Great-West violated WAC 284-43-331(2).

27. 1 of 23 provider contract forms misstated that the member, rather than the provider, received whistleblower protections. By failing to provide whistleblower protection for providers making a good faith report of carrier misconduct, Great-West violated WAC 284-43-320(9).
28. 1 of 23 provider contract forms improperly excluded judicial remedies. By excluding judicial remedies from its provider contracts, Great-West violated WAC 284-43-322(4).

Advertising:

29. None of the 74 samples examined contained the correct legal name of the insurer. Instead, the advertising materials included variations of a statement that Great-West Healthcare refers to products and services provided by Great-West Life & Annuity Company and its subsidiaries, statements that the Company's group business was underwritten by New England Life Insurance Company and Metropolitan Life Insurance Company, and materials referring to the Company's former name, One Health Plan. By failing to show the full legal name of the insurer in every advertisement, Great-West violated WAC 284-50-150(1). On June 6, 2005, Great West issued a memorandum to its senior vice presidents and compliance officers providing instruction on using appropriate letterhead and clearly identifying the full name of the company in any items that may be circulated in the marketplace, and as part of its compliance plan undertook additional training efforts to address compliance issues related to proper name use and identification in the Washington market.
30. 11 of the 74 pieces of advertising material reviewed by the examiners did not cite the source of statistics used in the advertisement. By failing to identify the source of statistics used in its advertising, Great-West violated WAC 284-50-110(3). Great-West amended its advertising procedures in May 2004 to address proper source citation in connection with statistics used in marketing materials.
31. 6 of 73 advertising pieces were found to contain false, deceptive or misleading information, including incorrect statements regarding Great-West's pharmacy network, misleading statements suggesting that only limited providers participated in the "Alternative Care Program," and statements that implied an absence of required contraceptive coverage. By using false, deceptive, or misleading advertising, Great-West violated RCW 48.44.110.
32. 4 of 73 of Great-West's advertisements did not provide evidence to support the claimed savings employers would experience if they participated in the CareResults program. By misrepresenting the terms and benefits of a health care services contract, Great-West violated RCW 48.44.120 and WAC 284-50-050.

Financial Examination Findings:

1. **NAIC Annual Statement Errors.** The examiners found thirteen areas in which Great-West's 2002 NAIC Annual Statement failed to conform to the NAIC Accounting

Practices and Procedures Manual and the NAIC Annual Statement Instructions. The most material violations are enumerated below. By failing to follow standards defined in the NAIC Accounting Practices and Procedures Manual, Great-West violated RCW 48.43.097 and WAC 284-07-050(2).

- i. Great-West's NAIC Annual Statements filed in 2000, 2001, and 2002 differed materially from the CPA's audited financial statements for the company. The OIC instructed Great-West to amend its 2000 annual statement and all subsequent filings in a letter dated August 1, 2001. Great-West again filed a nonconforming annual statement for 2001. The OIC again notified Great-West of the problem by letter dated October 22, 2002. Great-West responded on November 14, 2002. After this date, Great-West filed its 2002 annual statement, which again failed to conform with the CPA's audited financial statements. By failing to follow standards defined in the NAIC Accounting Practices and Procedures Manual, Great-West violated RCW 48.43.097 and WAC 284-07-050(2).
- ii. Great-West's Management Discussion and Analysis (MD&A) section was inadequate in both the 2001 and 2002 annual statements. The OIC notified Great-West of the MD&A deficiency in the 2001 annual statement by letter dated October 22, 2002. Great-West responded on November 14, 2002. After this date, Great-West filed its 2002 annual statement, which again failed to conform with the MD&A requirements. By failing to follow standards defined in the NAIC Accounting Practices and Procedures Manual, Great-West violated RCW 48.43.097 and WAC 284-07-050(2).
- iii. Great-West mischaracterized payments totaling \$2,914,780 received from GWLA to pay claims incurred before December 31, 2000. These claims were not covered by the Great-West's Indemnity Reinsurance Agreement, because that contract did not take effect until January 1, 2001. By failing to follow standards defined in the NAIC Accounting Practices and Procedures Manual, Great-West violated RCW 48.43.097 and WAC 284-07-050(2).

2. **Separation of Premium Funds.** Great-West permitted four companies, GWLA, Alta, New England Life, and Met Joint Venture, to collect Great-West premium and deposit that premium in to accounts held under the collecting companies' names. Washington law defines assets as those funds that "belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name" RCW 48.12.010. Funds held in an account that is not under the exclusive control of the insurer may not be treated as assets unless funds are in a trust or fiduciary account naming the insurer as the owner of the funds. By permitting GWLA, Alta, New England Life, and Met Joint Venture to co-mingle Great-West premium receipts with the companies' own funds, and

then including these premium receipts in its assets reported in its NAIC annual statement and other filings with the OIC, Great-West violated RCW 48.12.010.

3. **Administrative Services Agreement:** Great-West obtained administrative services under an agreement from GWLA. Great-West failed to provide detailed invoices or other supporting documentation to demonstrate that the fees charged under the Administrative Services Agreement were fair and reasonable. OIC examiners were unable to test whether the monthly premium billing between Great-West and GWLA was settled under the Administrative Services Agreement, because Great-West booked claim payments and premium billings to the same ledger account. By failing to maintain books and records "so as to clearly and accurately disclose the nature and details of the transactions," Great-West violated RCW 48.31C.050(1)(d).

CONSENT TO ORDER:

NOW, THEREFORE, Great-West Healthcare of Washington, Inc. wishes to resolve this matter without further administrative or judicial proceedings and the Insurance Commissioner consents to settle the matter in consideration of Great-West's payment of a fine and such other terms and conditions as are set forth below. The health care service contractor hereby consents to the entry of this order and acknowledges its duty to comply with the applicable laws and regulations of the State of Washington.

By agreement of the parties, the OIC will impose a fine of fifty thousand dollars (\$50,000.00) upon the Company.

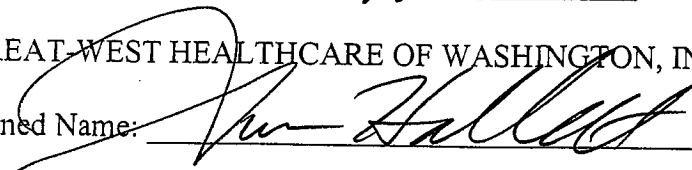
By agreement of the parties, Great-West Healthcare of Washington, Inc. agrees to pay fifty thousand dollars (\$50,000.00) within thirty days of the entry of this Order.

By agreement of the parties, Great-West Healthcare of Washington, Inc. agrees to relinquish its Certificate of Registration within thirty days of the entry of this Order.

Pursuant to RCW 48.44.166, failure to timely comply with the terms of this Consent Order shall constitute grounds a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

EXECUTED this 13 day of November, 2006 by:

GREAT WEST HEALTHCARE OF WASHINGTON, INC.

Signed Name: 

Printed Name: Susan Hallett

Printed Title: President

ORDER

NOW, THEREFORE, pursuant to the foregoing, Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

Pursuant to RCW 48.44.166, the Insurance Commissioner hereby imposes a fine of fifty thousand dollars (\$50,000.00) upon Great-West Healthcare of Washington, Inc., on the condition that:

1. Great-West Healthcare of Washington, Inc. shall pay the fine within thirty days of the entry of this Order.
2. Within thirty days of the entry of this Order, Great-West Healthcare of Washington, Inc. shall mail its original Certificate of Registration to the Insurance Commissioner, accompanied by the following documents:
 - a. A letter certifying that the company has no outstanding claims liabilities, including no policies in force;
 - b. A copy of any reinsurance agreement(s) transferring Great-West's liabilities to another entity;
3. Great-West Healthcare of Washington will provide statutory closing financial statement reflecting its status as of November 30, 2006 to the OIC by the end of December, 2006.
4. Failure to timely pay this fine and submit appropriate documents will constitute grounds for the revocation of the registration held by the health care service contractor in the State of Washington. It may also result in a civil lawsuit brought by the Attorney General on behalf of the Insurance Commissioner.

Entered at Tumwater, Washington, this 15th day of November, 2006.

MIKE KREIDLER
Insurance Commissioner

By: 

Katherine A. White, Staff Attorney
Legal Affairs Division